

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Proposed Policies and Programs
Governing Post-2003 Low-Income Assistance
Programs.

Rulemaking 04-01-006
(Filed January 8, 2004)

And Related Matters.

Application 04-06-038
(Filed June 30, 2004)
Application 04-07-002
(Filed July 1, 2004)
Application 04-07-010
(Filed July 1, 2004)
Application 04-07-011
(Filed July 1, 2004)
Application 04-07-012
(Filed July 1, 2004)
Application 04-07-013
(Filed July 1, 2004)
Application 04-07-014
(Filed July 1, 2004)
Application 04-07-015
(Filed July 1, 2004)
Application 04-07-020
(Filed July 8, 2004)
Application 04-07-027
(Filed July 2, 2004)
Application 04-07-050
(Filed July 29, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
SEEKING INPUT REGARDING ASSEMBLY BILL 868
(CARE PROGRAM ELIGIBILITY FOR MIGRANT HOUSING CENTERS)**

On September 21, 2004, the Governor signed Assembly Bill (AB) 868, which extends the benefits of the California Alternate Rates for Energy (CARE) program to migrant housing centers. The law takes effect on January 1, 2005. This ruling seeks input from the parties to this proceeding on the steps necessary to implement the legislation on or before that date.

With respect to the CARE program, which this proceeding is designed to implement, AB 868:

- Provides that migrant housing centers are eligible for reduced energy rates under the CARE program because of the presumed income levels of the centers' occupants, and
- Requires that any savings be passed onto the tenants through reduced rents.¹

In order to implement the statute, the large investor-owned utilities (IOUs) (Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company) and small and multijurisdictional utilities (SMJUs) (Sierra Pacific Power Company, Bear Valley Electric Service Company/Southern California Water Company, PacifiCorp, Southwest Gas Corporation, Alpine Natural Gas Company Operating Company No. 1 LLC, Avista Utilities, and West Coast Gas Company) shall take the following steps:

1. In the next 15 days, the IOUs shall meet and confer on means of implementing the legislation consistently around the state and across IOU territories.
2. In the next 30 days, the IOUs shall make a joint IOU filing presenting the IOUs' implementation plan. The plan shall be consistent across utility territories and shall address the questions

¹ The full text of AB 868 appears in Appendix A to this ruling.

listed below and any other implementation issues that the IOUs believe should be addressed.

3. In the next 15 days, the SMJUs shall meet and confer to determine whether AB 868 applies to them, and if so, how to implement the legislation in their service territories.
4. In the next 30 days, the SMJUs shall file with the Commission a statement identifying the migrant housing centers, as defined in AB 868, present in their service territories and how they propose to serve those centers consistent with AB 868.
5. During the meet and confer periods set forth in this ruling, the IOUs and SMJUs shall consult with the state Office of Migrant Services if necessary to answer the questions set forth below or determine how to implement AB 868.
6. Questions for all utilities covered by AB 868 to address in implementation plans:
 - a. How will the utilities ensure that the meter is only hooked up to the migrant workers' living quarters and not to anything else, such as agricultural pumping, non-migrant worker housing, or other business uses of the farm?
 - b. Who will ensure that the discount is passed onto migrant workers? Is such assurance the responsibility of the Office of Migrant Services or of this Commission?
 - c. How will the Commission and the utilities know when a center has been approved for having extended weeks of operation² so that the discount is given appropriately?
7. Parties may file comments on the IOU and SMJU filings within 15 calendar days of their filing. Parties may file reply comments within 7 calendar days of the filing of comments.

Therefore, **IT IS ORDERED** that:

² See Health and Safety Code 50710.1(c), as amended by AB 868.

1. In the next 15 days, the large investor-owned utilities (IOUs) (Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company) and small and multijurisdictional utilities (SMJUs) (Sierra Pacific Power Company, Bear Valley Electric Service Company/Southern California Water Company, PacifiCorp, Southwest Gas Corporation, Alpine Natural Gas Company Operating Company No. 1 LLC, Avista Utilities, and West Coast Gas Company) shall meet and confer regarding Assembly Bill (AB) 868 as set forth in the body of this ruling.

2. During the meet and confer periods, the IOUs and SMJUs shall consult with the state Office of Migrant Services if necessary to answer the questions set forth in the body of this ruling.

3. In the next 30 days, the IOUs shall make a joint IOU filing presenting the IOUs' implementation plan for AB 868. The plan shall be consistent across utility territories and shall address the questions listed in the body of this ruling and include any other implementation issues that the IOUs believe should be addressed.

4. In the next 30 days, the SMJUs shall file with the Commission a statement identifying the migrant housing centers, as defined in AB 868, present in their service territories and how they propose to serve those centers consistent with AB 868.

5. Parties may file comments on the IOU and SMJU filings within 15 calendar days of their filing. Parties may file reply comments within 7 calendar days of the filing of comments.

Dated October 1, 2004, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas

Administrative Law Judge

APPENDIX A

AB 868, Parra. Migrant farm labor centers.

Existing law authorizes the Department of Housing and Community Development to contract with local public and private nonprofit agencies to provide housing services, including shelter, education, sanitation, and day care services for migratory agricultural workers, through the development, construction, reconstruction, rehabilitation, or operation of a migrant farm labor center.

Existing law also authorizes, after approval, as specified, by the department, the operation of a migrant farm labor center for an extended period beyond 180 days if specified conditions are met, including a requirement that residents are provided advance notice of the scheduled closing date of the center.

This bill would require the above-described notice to include the scheduled date of the beginning of the extended occupancy period. The bill would also revise the procedure for approval by the department in cases of an extended opening date. It would also deem an entity operating a migrant farm labor center to be eligible for the California Alternative Rates for Energy Program.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to do all of the following:

(a) Provide a method of improving, upgrading, and increasing the seasonal utilization of migrant farm labor centers while recognizing the variety of different conditions that prevail at the centers and the fiscal constraints currently on the state.

(b) Give greater flexibility to the local entities that operate the migrant farm labor centers to increase seasonal utilization as appropriate.

(c) Increase the ability to access funding for improvements.

(d) Improve the housing conditions for farmworkers in the area served by the migrant farm labor centers.

SEC. 2. Section 50710.1 of the Health and Safety Code is amended to read:

50710.1. (a) If all the development costs of any migrant farm labor center assisted pursuant to this chapter are provided by federal, state, or local grants, and if inadequate funds are available from any federal, state, or local service to write-down operating costs, the department may approve rents for that center that are in excess of rents charged in other centers assisted by the Office of Migrant Services. However, prior to approving these rents, the department shall consider the adequacy of evidence presented by the entity operating the center that the rents reimburse actual, reasonable, and necessary costs of operation. The department may not increase any rent charged at a migrant farm labor center during the 2003-04 fiscal year.

(b) At the end of each fiscal year, any entity operating a migrant farm labor center pursuant to this chapter may establish a reserve account comprised of the excess funds provided through the annual

operating contract received from the department, if the department certifies there is no need to address reasonable general maintenance requirements or repairs, rehabilitation, and replacement needs of the requesting migrant farm labor center which affect the immediate health and safety of residents. The cumulative balance of the reserve account shall not exceed 10 percent of the annual operating funds annually committed to the entity by the department. Funds in the reserve account shall be used only for capital improvements such as replacing or repairing structural elements, furniture, fixtures, or equipment of the migrant farm labor center, the replacement or repair of which are reasonably required to preserve the migrant farm labor center. Withdrawals from the reserve account shall be made only upon the written approval of the department of the amount and nature of expenditures.

(c) A migrant farm labor center governed by this chapter may be operated for an extended period prior to or beyond the standard 180-day period after approval by the department, provided that all of the following conditions are satisfied:

(1) No additional subsidies provided by the department are used for the operation or administration of the migrant farm center during the extended occupancy period except to the extent that state funds are appropriated or authorized for the purpose of funding all or part of the cost of subsidizing extended occupancy periods during the first 14 days only.

(2) Rents are not to be increased above the rents charged during the standard 180-day occupancy period unless the department finds that an increase is necessary to cover the difference between reasonable operating costs necessary to keep the center open during the extended occupancy period and the amount of state funds available pursuant to paragraph (1) and any contributions from agricultural employers or other federal, local, or private sources. These contributions shall not be used to reduce the amount of state funds that otherwise would be made available to the center to subsidize rents during an extended occupancy period.

(3) In no event shall the rent during the extended occupancy period exceed the average daily operating cost of the center, less any subsidy funds available pursuant to paragraph (1) or (2). With respect to an extended occupancy beyond the standard 180-day period, households representing at least 25 percent of the units in the center shall have indicated their desire and intention to remain in residency by signing a petition to the local entity to keep the center open for an extended period at rents that are the same or higher than rents during the regular period of occupancy. Each household shall receive a clear bilingual notice describing the extended occupancy options attached to the lease.

The Legislature finds and declares that because the number of residents may be substantially reduced during the extended occupancy period, a rent increase may be necessary to cover operating costs. It is the intent of the Legislature that the public sector, private sector, and farmworkers should each play an important role in ensuring the financial viability of this important source of needed housing.

(4) An extended occupancy period is requested by an entity operating the migrant farm labor center and received by the

department no earlier than 30 days and no later than 15 days prior to the center's scheduled opening or closing date. The department shall notify the entity and petitioning residents of the final decision no later than seven days prior to the center's scheduled opening or closing date. During the extended occupancy period, occupancy shall be limited to migrant farmworkers and their families who resided or intended to reside at a migrant center during the regular period of occupancy.

(5) Before approving or denying an early opening or an extension and establishing the rents for the extended occupancy period, both of which shall be within the sole discretion of the department, the department shall take into consideration all of the following factors:

(A) The structural and physical condition of the center, including water and sewer pond capacity and the capacity and willingness of the local entity to operate the center during the extended occupancy period.

(B) Whether local approvals are required, and whether there are competing demands for the use of the center's facilities.

(C) Whether there is adequate documentation that there is a need for residents of the migrant center to continue work in the area, as confirmed by the local entity.

(D) The climate during the extended occupancy period.

(E) The amount of subsidy funds available that can be allocated to each center to subsidize rents below the operating costs and the cost of operating each center during the extended occupancy period.

(F) The extended occupancy period is deemed necessary for the health and safety of the migrant farmworkers and their families.

(G) Other relevant factors affecting the migrant farmworkers and their families and the operation of the centers.

(6) The rents collected during the extended occupancy period shall be remitted to the department. However, based on financial records to the satisfaction of the department, the department may reduce the amount to be remitted by an amount it determines the local entity has expended during the extended occupancy period that is not being reimbursed by department funds.

(7) The occupancy during the extended occupancy period represents a new tenancy and is not subject to existing and statutory and regulatory limitations governing rents. Prior to the beginning of the extended occupancy period, residents shall be provided at least two days' advance written notice of any rent increase and of the expected length of the extended occupancy period, including the scheduled date of the beginning of the extended occupancy period and closure of the center. Prior to being eligible for residency during the extended occupancy period, residents shall sign rental documents deemed necessary by the department.

(d) The Legislature finds and declares that variable annual climates and changing agricultural techniques create an inability to accurately predict the end of a harvest season for the purposes of housing migrant farmworkers and their families. Because of these factors, in any part of this state, and in any specific year, one or more migrant farmworker housing centers governed by this chapter need to open early or remain open for up to two additional weeks to allow the residents to provide critical assistance to growers in

harvesting crops while also fulfilling work expectations that encouraged them to migrate to the areas of the centers. In addition, if the centers close prematurely or open late, the migrant farmworkers often must remain or reside in the areas to work for up to two weeks. During this time they will not be able to obtain decent, safe, and affordable housing and the health and safety of their families and the surrounding community will be threatened.

The Legislature therefore finds and declares that, for the purposes of any public or private right, obligation, or authorization related to the use of property and improvements thereon as a 180-day migrant center, an extended use of any housing center governed by this chapter pursuant to this section is deemed to be the same as the 180-day use generally authorized by this chapter.

(e) Because of the presumed income levels of the occupants of migrant farm labor centers, an entity operating a migrant farm labor center shall be deemed eligible for the California Alternative Rates for Energy program established pursuant to Sections 382 and 739.1 of the Public Utilities Code. Any savings from a reduction in energy rates shall be passed on to the occupants of the migrant farm labor center.

SEC. 3. Section 50712.5 of the Health and Safety Code is amended to read:

50712.5. (a) The Department of Housing and Community Development, through its Office of Migrant Services, pursuant to the authority granted in subdivision (n) of Section 50406 and this chapter shall assist in the development, construction, reconstruction, rehabilitation, or operation of migrant farm labor centers. The department shall encourage and assist in the development of family units, or dormitory-style units, as may be appropriate, in migrant farm labor centers in any county or counties where there is a substantial unmet need for migrant farmworker housing. It is the intent of the Legislature in permitting the development of dormitory-style housing that family households not be mixed with single person households unless the contractor or sponsor can make reasonable accommodations to provide separate living and sleeping areas in the dormitory to those family households.

(b) The department may use funds appropriated for the purposes of the Office of Migrant Services to maximize the utility of any other local, federal, state, or private funds or other assistance made available for the purposes of this section. These appropriated funds may be used for costs including, but not limited to, the following items:

(1) Predevelopment costs incurred in the process of securing construction or long-term financing site acquisition development, architectural, engineering, or legal expenses, or construction costs, including construction interest, or both. These costs shall not be subject to reimbursement from construction or permanent financing, as the case may be, if the reimbursement would contribute to, or result in, rents substantially in excess of those in other migrant farm labor centers assisted by the Office of Migrant Services, as determined by the department.

(2) A grant or deferred payment loan for acquisition, development, and related infrastructure costs, including construction, reconstruction, rehabilitation, or operation, which may be forgiven,

matching or supplementing the permanent financing or grant made available by a federal, state, or local housing assistance program.

(3) Operating cost reductions to the extent necessary to ensure that the rents in the migrant farm center are not substantially in excess of those in other migrant farm labor centers operated by the Office of Migrant Services.

(c) The department shall seek the maximum possible contribution of funds, land, and other incentives from local, federal, state, and private sources for all the purposes described in subdivision (b). Funds transferred pursuant to Part 8 (commencing with Section 53130) shall not be used in a manner inconsistent with this part. Migrant farm labor centers shall be eligible for energy conservation assistance, including the assistance provided in programs established pursuant to Section 381 of the Public Utilities Code and administered either by a utility or a local or other entity. In the funding and evaluation of energy conservation assistance pursuant to this section, the California Public Utilities Commission shall consider improvements in habitability and the need to bring migrant housing up to adequate standards of comfort through energy efficient mechanical and lighting systems.

(d) To the extent that any migrant farm labor center assisted pursuant to this section is financed or otherwise assisted by the United States Farmers Home Administration, and to the extent the Farmers Home Administration requires compliance with construction, operating, term of use, or residency standards which differ from those required by the department pursuant to regulations adopted to implement and interpret this chapter, those Farmers Home Administration standards shall supersede the department's regulations.

(e) The Office of Migrant Services may authorize the use of dormitory-style housing in a migrant farm labor center.

(END OF APPENDIX A)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Seeking Input Regarding Assembly Bill 868 (Care Program Eligibility for Migrant Housing Centers) on all parties of record in this proceeding or their attorneys of record.

Dated October 1, 2004, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.